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09/917,792	07/31/2001	Alan D. Gould	50442.010200	9535
22191	7590	11/18/2009 GREENBERG TRAURIG, LLP (DC/ORL) 2101 L Street, N.W. Suite 1000 Washington, DC 20037		
		EXAMINER ALVAREZ, RAQUEL		
		ART UNIT 3688		PAPER NUMBER ELECTRONIC
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 09/917,792	<b>Applicant(s)</b> GOULD ET AL.
	<b>Examiner</b> Raquel Alvarez	<b>Art Unit</b> 3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

1) Responsive to communication(s) filed on 13 July 2009.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3-12,14-20,26 and 30-33 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3-12,14-20,26 and 30-33 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)

Paper No./Mail Date 7/13/09

4) Interview Summary (PTO-413)

Paper No./Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

1. This office action is in response to communication filed on 7/13/2009.
2. Claims 1, 3-12, 14-20, 26 and 30-33 are presented for examination.

#### **Claim Rejections - 35 USC § 112**

3. Claims 1, 12, 14, 15, 16, 20, 30, 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "substantially" renders the claim indefinite because the claim do not convey the exact degree or value.

#### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 8, 10-15, 26-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Von Kohorn (5,759,101 hereinafter Von Kohorn).

With respect to claims 1, 3, 8, 10, 11, 26-27, 31 Von Kohorn teaches a method of conducting an incentivized trivia contest (col. 44, lines 55 to col. 45, lines 1-5). Generating survey template to include a first value indicative of a first number of program contest questions to be asked of a user (i.e. the system uses electronic means for asking one set of question pertaining to the outcome of a game, TV program etc.)(col. 14, lines 32-36 and col. 16, lines 30-36) and a second value indicative of a

second number of advertising content questions to be asked of the user (i.e. the system uses electronic means for asking sub-questions derived from a multi-part question)(col. 16, lines 35-44); receiving an identification of a program in connection with a request to take a survey (i.e. calling the particular prerecorded program)(FIG. 22 and 41 shows diagrammatically a further embodiment of the invention wherein a respondent can activate a prerecorded program by use of a telephone in order to respond to questions); accessing a data store using the identification of the program to determine an advertisement was aired during a broadcast of the program (i.e. questions may be asked in conjunction with the broadcast commercial and program (col. 3, lines 44-46, col. 16, lines 16-19 and col. 44, lines 55-62); selecting a first subset of a first and second trivia questions to ask a member associated with the program, wherein the first subset is substantially equal in number to the first value of the survey template(i.e. first set of questions with matching multi-part or multi-task follow up questions (col. 16, lines 35-44); transmitting the survey to the user and receiving one or more responses to the survey via a communication medium (Figure 28, 842); scoring the one or more responses (Figure 28, 838); and providing an incentive to the user based on results of said scoring (Figure 28, 844).

With respect to claim 2, Von Kohorn further teaches storing data indicative of which advertising airs in conjunction with said broadcast (i.e. certain commercial may be aired for various product and/or services targeted or tailored to the viewing audience)(col. 3, lines 44-46 and col. 16, lines 16-19).

With respect to claims 4-5, Von Kohorn further teaches that the broadcast comprises radio broadcast and a network connection (col. 7, lines 11-34).

With respect to claims 12, 28-30 Von Kohorn teaches a method of using a user profile to conduct a trivia contest (col. 44, lines 55 to col. 45, lines 1-5 and 135, lines 5-27). Generating survey template to include a first value indicative of a first number of program contest questions to be asked of a user (i.e. the system uses electronic means for asking one set of question pertaining to the outcome of a game, TV program etc.)(col. 14, lines 32-36 and col. 16, lines 30-36) and a second value indicative of a second number of advertising content questions to be asked of the user (i.e. the system uses electronic means for asking sub-questions derived from a multi-part question)(col. 16, lines 35-44); receiving an identification of a program in connection with a request to take a survey (i.e. calling the particular prerecorded program)(FIG. 22 and 41 shows diagrammatically a further embodiment of the invention wherein a respondent can activate a prerecorded program by use of a telephone in order to respond to questions); accessing a data store using the identification of the program to determine an advertisement was aired during a broadcast of the program (i.e. questions may be asked in conjunction with the broadcast commercial and program (col. 3, lines 44-46, col. 16, lines 16-19 and col. 44, lines 55-62); using a demographic profile associated with the user to select a first subset of a first set of trivia questions associated with the program to be included in the survey, wherein the first subset is substantially equal in

number to the first value of the survey template and using the demographic profile associated with the user to select a second subset of a second set of trivia questions associated with the advertisement to be included in the survey, wherein the second subset is substantially equal in number to the second value of the survey template(i.e. user the use's gender, income, demographic for subsequent polling/survey) (col. 135, lines 5-27); transmitting the survey to the user and receiving one or more responses to the survey via a communication medium (Figure 28, 842); scoring the one or more responses (Figure 28, 838); and providing an incentive to the user based on results of said scoring (Figure 28, 844).

With respect to claim 13, Von Kohorn further teaches that the broadcast comprises radio broadcast and a network connection (col. 7, lines 11-34).

With respect to claims 14-15 Von Kohorn teaches a method of determining advertising performance and product placement (col. 44, lines 55 to col. 45, lines 1-5). Generating survey template to include a first value indicative of a first number of program contest questions to be asked of a user (i.e. the system uses electronic means for asking one set of question pertaining to the outcome of a game, TV program etc.)(col. 14, lines 32-36 and col. 16, lines 30-36) and a second value indicative of a second number of advertising content questions to be asked of the user (i.e. the system uses electronic means for asking sub-questions derived from a multi-part question)(col. 16, lines 35-44); receiving an identification of a program in connection with a request to

take a survey (i.e. calling the particular prerecorded program)(FIG. 22 and 41 shows diagrammatically a further embodiment of the invention wherein a respondent can activate a prerecorded program by use of a telephone in order to respond to questions); accessing a data store using the identification of the program to determine an advertisement was aired during a broadcast of the program (i.e. questions may be asked in conjunction with the broadcast commercial and program (col. 3, lines 44-46, col. 16, lines 16-19 and col. 44, lines 55-62); selecting a first subset of a first and second trivia questions to ask a member associated with the program, wherein the first subset is substantially equal in number to the first value of the survey template(i.e. first set of questions with matching multi-part or multi-task follow up questions (col. 16, lines 35-44); transmitting the survey to the user and receiving one or more responses to the survey via a communication medium (Figure 28, 842) and determining advertisement performance based upon the one or more responses to the subset of trivia questions (col. 44, lines 55 to col. 45, lines 1-5).

With respect to claims 32-33 Von Kohorn teaches qualifying the program content questions and the advertising content questions by a level of difficulty in the survey template (I.e. higher amount prizes for higher scoring respondents)(Figure 31).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 6-7, 9, 16-20 and rejected under 35 U.S.C. 103(a) as being

unpatentable over Von Kohorn in view of Official Notice.

Claims 6 and 7 further recite wherein said network comprises an Internet connection. Von Kohorn teaches that the broadcast is via a network connection (col. 7, lines 11-34). Von Kohorn doesn't specifically teach that the network comprises an Internet connection. Official notice is taken that it is old and well known in the computer network arts to use Internet connection because such a modification facilitates communication around the world. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included for said network to have comprised Internet connection in order to obtain the above mentioned advantage.

Claim 9 further recites that the communication medium comprises a set-top box. Official notice is taken that set-top boxes are old and well known to be used to perform computing functions that don't require much computing power at a fraction of the cost of a full computer. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included a set-top box in order to obtain the above mentioned advantage.

With respect to claims 16-19, Von Kohorn teaches a method of the effectiveness of advertising (col. 44, lines 55 to col. 45, lines 1-5). Storing in a computer system a set

of trivia questions relating to advertising content (col. 44, lines 55 to col. 45, lines 1-5); storing in said computer system a second set of trivia questions relating to show content (col. 2, lines 42-59); associating said first and second sets of trivia questions with a broadcast of said advertising content along with said show content (i.e. questions may be asked in conjunction with the broadcast commercial and program (col. 3, lines 44-46, col. 16, lines 16-19 and col. 44, lines 55-62); selecting a subset of said first and second trivia questions to ask a member (Figure 28); transmitting said subset of trivia questions to said member and receiving said member's responses thereto via a communication medium (Figure 28, 842); scoring said member's performance in response to said subset of trivia questions (Figure 28, 838); providing incentives to said member based upon results of said scoring (Figure 28, 844).

With respect to creating a report indicative of effectiveness of said advertising content based at least in part on said member's responses and demographic profiles. Von Kohorn teaches effectiveness of advertisements/commercials based on member's responses and maintaining demographic profiles on the members (col. 44 lines 55 to col. 45, lines 1-5 and col. 135, lines 5-27). With respect to preparing a report. Official notice is taken that it is old and well known to prepare a report on information gathered because such a modification would provide a detailed account of the information. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included creating a report indicative of effectiveness of said advertising content based at least in part on said member's responses and demographic profiles in order to obtain the above mentioned advantage.

With respect to claim 20, Von Kohorn teaches a method of conducting an incentivized trivia contest to increase the effectiveness of advertising content, determine advertising content performance, and determine show content performance (col. 135, lines 5-27). Generating survey template to include a first value indicative of a first number of program contest questions to be asked of a user (i.e. the system uses electronic means for asking one set of question pertaining to the outcome of a game, TV program etc.)(col. 14, lines 32-36 and col. 16, lines 30-36) and a second value indicative of a second number of advertising content questions to be asked of the user (i.e. the system uses electronic means for asking sub-questions derived from a multi-part question)(col. 16, lines 35-44); receiving an identification of a program in connection with a request to take a survey (i.e. calling the particular prerecorded program)(FIG. 22 and 41 shows diagrammatically a further embodiment of the invention wherein a respondent can activate a prerecorded program by use of a telephone in order to respond to questions); accessing a data store using the identification of the program to determine an advertisement was aired during a broadcast of the program (i.e. questions may be asked in conjunction with the broadcast commercial and program (col. 3, lines 44-46, col. 16, lines 16-19 and col. 44, lines 55-62); using a demographic profile associated with the user to select a first subset of a first set of trivia questions associated with the program to be included in the survey, wherein the first subset is substantially equal in number to the first value of the survey template and using the demographic profile associated with the user to select a second subset of a second set

of trivia questions associated with the advertisement to be included in the survey, wherein the second subset is substantially equal in number to the second value of the survey template(i.e. user the use's gender, income, demographic for subsequent polling/survey) (col. 135, lines 5-27); transmitting the survey to the user and receiving one or more responses to the survey via a communication medium (Figure 28, 842); scoring said member's performance in response to said subset of trivia questions (Figure 28, 838); providing incentives to said member based upon results of said scoring (Figure 28, 844).

With respect to using answers from the first and second sets of trivia questions to create a report indicative of effectiveness of said advertising content. Von Kohorn teaches effectiveness of advertisements/commercials based on member's responses (col. 44 lines 55 to col. 45, lines 1-5) . With respect to preparing a report. Official notice is taken that it is old and well known to prepare a report on information gathered because such a modification would provide a detailed account of the information. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included creating a report indicative of effectiveness of said advertising content based at least in part on said member's responses to the first and second set of trivia questions in order to obtain the above mentioned advantage.

**Response to Arguments**

6. Applicant's arguments filed 7/13/2009 have been fully considered but they are not persuasive.

7. Applicant argues that Von Kohorn doesn't teach generating a survey template to be used in selecting a first number of program content questions and a second number of advertising content questions. The Examiner disagrees with Applicant because as shown in Figure 44, item 1276 Von Kohorn teaches using a computer system to generate/formulate/create first and second questions, the system is an automated iterative process of creating template survey questions.

8. Applicant argues that Von Kohorn doesn't teach using a demographic profile to select trivia questions. The Examiner disagrees with Applicant because further Von Kohorn teaches on col. 50, lines 13-25 generating questions based on respondent's income and expenditures and using these responses for **subsequent polling** (col. 135, lines 24-27).

9. With respect to the Applicant arguments pertaining to selecting a second subset of a second trivia questions associated with an advertisement to be included in the survey, wherein the second subset is substantially equal in number to the second value of the survey template. The term "substantially" render the claims indefinite.

#### Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Point of contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (571)272-6715. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Weinhardt can be reached on (571)272-6633. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raquel Alvarez/  
Primary Examiner, Art Unit 3688

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R.A.  
11/12/2009